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7 **BEFORE THE**  
8 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2009-56

12 **ZERU NKOSI**  
13 **250 Knoll Road, Apt. 74**  
14 **San Marcos, CA 92069**

**DEFAULT DECISION AND ORDER**

**Vocational Nurse License No. VN 241124**

[Gov. Code, §11520]

Respondent.

15 **FINDINGS OF FACT**

16 1. On or about March 8, 2011, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., in  
17 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
18 Technicians, Department of Consumer Affairs, filed Accusation No. VN-2009-56 against Zeru  
19 Nkosi (Respondent) before the Board of Vocational Nursing and Psychiatric Technicians.  
20 (Accusation attached as Exhibit A.)

21 2. On or about April 7, 2009, the Board of Vocational Nursing and Psychiatric  
22 Technicians (Board) issued Vocational Nurse License No. VN 241124 to Respondent. The  
23 Vocational Nurse License was in full force and effect at all times relevant to the charges brought  
24 herein. The license expired on March 31, 2011, and has not been renewed.

25 3. On or about March 8, 2011, Respondent was served by Certified and First Class Mail  
26 copies of the Accusation No. VN-2009-56, Statement to Respondent, Notice of Defense, Request  
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
28 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 section 136 and California Code of Regulations, title 16, section 2504, is required to be reported  
2 and maintained with the Board, which was and is:

3 250 Knoll Road, Apt. 74  
4 San Marcos, CA 92069

5 4. Service of the Accusation was effective as a matter of law under the provisions of  
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
7 124.

8 5. On or about March 14, 2011, the aforementioned documents were returned by the  
9 U.S. Postal Service marked ""Attempted - Not Known".

10 6. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
13 of the accusation not expressly admitted. Failure to file a notice of defense shall  
14 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
15 may nevertheless grant a hearing.

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
18 VN-2009-56.

19 8. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the  
21 hearing, the agency may take action based upon the respondent's express admissions  
22 or upon other evidence and affidavits may be used as evidence without any notice to  
23 respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Board finds  
25 Respondent is in default. The Board will take action without further hearing and, based on the  
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
28 file at the Board's offices regarding the allegations contained in Accusation No. VN-2009-56,  
finds that the charges and allegations in Accusation No. VN-2009-56, are separately and  
severally, found to be true and correct by clear and convincing evidence.

///

1       10. Taking official notice of its own internal records, pursuant to Business and  
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
3 and Enforcement is \$912.50 as of April 6, 2011.

4                                   **DETERMINATION OF ISSUES**

5       1. Based on the foregoing findings of fact, Respondent Zeru Nkosi has subjected his  
6 Vocational Nurse License No. VN 241124 to discipline.

7       2. The agency has jurisdiction to adjudicate this case by default.

8       3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke  
9 Respondent's Vocational Nurse License based upon the following violations alleged in the  
10 Accusation which are supported by the Default Decision Investigatory Evidence Packet in this  
11 case:

12           a. Respondent has subjected his license to disciplinary action under sections 490  
13 and 2878, subdivision (f) of the Code in on or about October 20, 2009, in a criminal proceeding  
14 entitled *People of the State of California v. Zeru Nkosi*, in San Diego County Superior Court, case  
15 number M086111, Respondent was convicted on his plea of guilty of violating Vehicle Code  
16 section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent  
17 or higher, a misdemeanor. The court found true the allegation that Respondent was previously  
18 convicted on May 6, 2005, of driving under the influence of alcohol in Indiana. Such conduct is  
19 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

20           b. Respondent has subjected his license to disciplinary action under sections 490  
21 and 2878, subdivision (f) of the Code in that on or about October 22, 2009, in a criminal  
22 proceeding entitled *People of the State of California v. Zeru Nkosi*, in San Diego County Superior  
23 Court, case number CN266198, Respondent was convicted on his plea of guilty of violating  
24 Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or higher, and  
25 the court found true the enhancement that Respondent violated Vehicle Code section 23578,  
26 driving with a BAC of .15 or more, conduct substantially related to the qualifications, functions,  
27 and duties of a licensed vocational nurse.

28    ///

1 c. Respondent has subjected his license to disciplinary action under section  
2 2878.5, subdivision (b) of the Code for unprofessional conduct in that on or about June 27, 2009,  
3 and July 23, 2009, Respondent used alcohol in a manner that was dangerous or injurious to  
4 himself and others, when he operated a motor vehicle on a public roadway.

5 d. Respondent has subjected his license to disciplinary action under section  
6 2878.5, subdivision (c) of the Code for unprofessional conduct in that on or about October 20,  
7 2009, and October 22, 2009, Respondent pled guilty to and was twice convicted of violating  
8 Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or higher, with  
9 a prior conviction in 2005 for the same violation.

10 **ORDER**

11 IT IS SO ORDERED that Vocational Nurse License No. VN 241124, heretofore issued to  
12 Respondent Zeru Nkosi, is revoked.

13 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
14 written motion requesting that the Decision be vacated and stating the grounds relied on within  
15 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
16 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

17  
18 This Decision shall become effective on July 15, 2011.

19  
20 It is so ORDERED June 15, 2011

21  
22   
23 FOR THE BOARD OF VOCATIONAL NURSING  
24 AND PSYCHIATRIC TECHNICIANS  
25 DEPARTMENT OF CONSUMER AFFAIRS

26 DOJ Matter ID: SD2010703209

27 Attachment:  
28 Exhibit A: Accusation

# Exhibit A

Accusation

FILED

Board of Vocational Nursing  
and Psychiatric Technicians

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*Attorneys for Complainant*

9  
10 BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. VN-2009-56

13 ZERU NKOSI  
250 Knoll Road, Apt. 74  
14 San Marcos, CA 92069

ACCUSATION

15 Vocational Nurse License No. VN 241124

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in  
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
22 Technicians, Department of Consumer Affairs.

23 2. On or about April 7, 2009, the Board of Vocational Nursing and Psychiatric  
24 Technicians issued Vocational Nurse License Number VN 241124 to Zeru Nkosi (Respondent).  
25 The Vocational Nurse License was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on March 31, 2011, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2878 of the Code states:

6 The Board may suspend or revoke a license issued under this chapter [the  
7 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the  
following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the  
9 following:

10 . . . .

11 (f) Conviction of a crime substantially related to the qualifications, functions,  
12 and duties of a licensed vocational nurse, in which event the record of the conviction  
shall be conclusive evidence of the conviction.

13 . . . .

14 10. Section 2878.5 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the meaning  
16 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for  
a person licensed under this chapter to do any of the following:

17 . . . .

18 (b) Use any controlled substance as defined in Division 10 of the Health and  
19 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
20 beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
any other person, or the public, or to the extent that the use impairs his or her ability  
to conduct with safety to the public the practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving possession of any narcotic or  
22 dangerous drug, or the prescription, consumption, or self-administration of any of the  
23 substances described in subdivisions (a) and (b) of this section, in which event the  
record of the conviction is conclusive evidence thereof.

24 . . . .

25 ///

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28 ///



## REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

12. California Code of Regulations, Title 16, section 2522 states:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

(4) Overall disciplinary record.

(5) Overall criminal actions taken by any federal, state or local agency or court.

(6) Prior warnings on record or prior remediation.

1 (7) Number and/or variety of current violations.

2 (8) Mitigation evidence.

3 (9) In case of a criminal conviction, compliance with terms of sentence and/or  
4 court-ordered probation.

5 (10) Time passed since the act(s) or offense(s) occurred.

6 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
7 Penal Code section 1203.4.

8 (12) Cooperation with the Board and other law enforcement or regulatory  
9 agencies.

10 (13) Other rehabilitation evidence.

### 11 COST RECOVERY

12 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
13 administrative law judge to direct a licensee found to have committed a violation or violations of  
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case.

### 16 FIRST CAUSE FOR DISCIPLINE

17 (October 20, 2009 Criminal Conviction for DUI on June 27, 2009)

18 14. Respondent has subjected his license to disciplinary action under sections 490 and  
19 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
20 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
21 circumstances are as follows:

22 a. On or about October 20, 2009, in a criminal proceeding entitled *People of*  
23 *the State of California v. Zeru Nkosi*, in San Diego County Superior Court, case number  
24 M086111, Respondent was convicted on his plea of guilty of violating Vehicle Code section  
25 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or  
26 higher, a misdemeanor. The court also found true the allegation that Respondent was previously  
27 convicted on May 6, 2005, of driving under the influence of alcohol in Indiana (as detailed in  
28 paragraph 18, below.) A second count of violating Vehicle Code section 23152, subdivision (a),  
driving under the influence of alcohol, was dismissed pursuant to a plea agreement.

1           b.       As a result of the conviction, on or about October 20, 2009, Respondent  
2 was sentenced to five years summary probation, and ordered to serve 96 hours in Work Release  
3 Program custody. Respondent was further ordered to perform five days service in the Public  
4 Service Program, enroll in and complete a Multiple Conviction Program and a MADD victim  
5 impact panel, pay fines, fees, and restitution in the amount of \$2,418, and comply with the terms  
6 of standard DUI probation. On April 28, 2010, the court issued a bench warrant for Respondent's  
7 arrest after he failed to abide by the terms of his probation. The warrant remains active.

8           c.       The facts that led to the conviction are that on or about the early morning  
9 of June 27, 2009, a San Diego County Deputy Sheriff was driving a marked patrol vehicle on  
10 Interstate 15 in the vicinity of Poway. He observed a truck in the #1 lane, driven by Respondent,  
11 pass his patrol vehicle and was paced going approximately 85 miles per hour. Then Respondent  
12 swerved from the #1 lane into the path of a semi-truck in the #3 lane. The semi-truck rotated  
13 counter-clockwise and jackknifed directly in front of the Deputy. The Deputy had to brake  
14 aggressively to avoid colliding with the semi-truck, and maneuvered around the truck to follow  
15 Respondent's vehicle. The Deputy conducted a traffic stop and spoke to Respondent at the  
16 driver's side window. Respondent appeared to be very disoriented. He had a strong odor of an  
17 alcoholic beverage on his breath and person, his eyes were bloodshot and watery, and his speech  
18 was slurred. Respondent insisted he had consumed only two drinks. Respondent failed to  
19 complete the field sobriety tests as explained and demonstrated by the Deputy and refused to  
20 provide a breath sample for the preliminary alcohol screening test. Respondent was arrested for  
21 driving under the influence of alcohol. At booking, Respondent elected to provide a blood  
22 sample for testing which resulted in a BAC of .14 percent.

## 23                               SECOND CAUSE FOR DISCIPLINE

24                               (October 22, 2009 Criminal Conviction for DUI on July 23, 2009)

25           15.       Respondent has subjected his license to disciplinary action under sections 490 and  
26 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
27 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
28 circumstances are as follows:

1           a.       On or about October 22, 2009, in a criminal proceeding entitled *People of*  
2 *the State of California v. Zeru Nkosi*, in San Diego County Superior Court, case number  
3 CN266198, Respondent was convicted on his plea of guilty of violating Vehicle Code section  
4 23152, subdivision (b), driving with a BAC of 0.08 percent or higher, and the court found true the  
5 enhancement that Respondent violated Vehicle Code section 23578, driving with a BAC of .15 or  
6 more. A second count of violating Vehicle Code section 23152, subdivision (a), driving under  
7 the influence of alcohol, was dismissed pursuant to a plea agreement.

8           b.       As a result of the conviction, on or about October 22, 2009, Respondent  
9 was sentenced to three years summary probation, and ordered to perform 10 days service in the  
10 Public Service Program to be completed no later than January 21, 2010, or Respondent would  
11 spend one day in custody for every day missed. Respondent was further required to enroll in and  
12 complete a First Conviction Program and a MADD victim impact panel, pay fines, fees, and  
13 restitution in the amount of \$1,900, and comply with the terms of standard DUI probation. On  
14 February 24, 2010, the court issued a bench warrant for Respondent's arrest after he failed to  
15 abide by the terms of his probation. The warrant remains active.

16           c.       The facts that led to the conviction are that on or about the early morning  
17 of July 23, 2009, California Highway Patrol (CHP) officers who were at the Vista Detention  
18 Facility on a separate DUI arrest, received a telephone call from the nurse who had just completed  
19 the blood draw on their suspect. The nurse had left the jail and was on her way home when she  
20 observed a truck with its engine running, sitting at an intersection at a green light. The driver,  
21 Respondent, appeared to be passed out behind the wheel of the truck. The CHP officers  
22 responded and observed the vehicle stopped in the intersection. As the CHP officers approached,  
23 Respondent suddenly accelerated into the intersection while straddling two lanes. The officers  
24 activated their lights and siren and followed Respondent, who continued to accelerate rapidly.  
25 Respondent eventually yielded and the officers conducted a traffic stop. The CHP officer  
26 explained to Respondent the reason for the stop. Respondent had a blank stare on his face and  
27 appeared to be very intoxicated; his eyes were red and watery and there was a strong odor of an  
28 alcoholic beverage coming from the vehicle. Respondent was asked to exit his vehicle and it was

1 observed that he was very unsteady on his feet and stumbled several times. Although the officer  
2 detected an odor of an alcoholic beverage on Respondent's breath, Respondent denied having  
3 consumed alcohol. Respondent refused to answer pre-field sobriety test questions and refused to  
4 submit to any field sobriety tests. Respondent was arrested for driving under the influence. He  
5 told the officer that he did not have a driver's license because it had been taken by officers several  
6 weeks earlier during his last DUI arrest. Respondent submitted a blood sample which was  
7 analyzed at .15 percent BAC.

#### 8 THIRD CAUSE FOR DISCIPLINE

##### 9 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

10 16. Respondent has subjected his license to disciplinary action under section 2878.5,  
11 subdivision (b) of the Code in that on or about June 27, 2009, and July 23, 2009, Respondent used  
12 alcohol and was under the influence of alcohol in a manner that was dangerous or injurious to  
13 himself and others, in that he operated a motor vehicle on a public roadway.

#### 14 FOURTH CAUSE FOR DISCIPLINE

##### 15 (Unprofessional Conduct - Criminal Conviction Involving the Consumption of Alcohol)

16 17. Respondent has subjected his license to disciplinary action under section 2878.5,  
17 subdivision (c) of the Code in that on or about October 20, 2009, and October 22, 2009,  
18 Respondent pled guilty to and was twice convicted of violating Vehicle Code section 23152,  
19 subdivision (b), driving with a BAC of 0.08 percent or higher, with a prior conviction in 2005 for  
20 the same violation.

#### 21 DISCIPLINARY CONSIDERATIONS

22 18. To determine the degree of discipline, if any, to be imposed on Respondent,  
23 Complainant alleges:

24 a. On or about June 24, 2005, in a prior criminal proceeding entitled *People of the*  
25 *State of Indiana v. Zeru Nkosi*, in St. Joseph County Traffic & Misdemeanor Court, case number  
26 CM03768. Respondent was convicted of driving under the influence of alcohol on May 6, 2005.

27 b. In a letter to Respondent dated March 5, 2009, an Enforcement Analyst from  
28 the Board advised Respondent that the Board was not going to deny Respondent's application for

1 licensure at that time based on the fact that Respondent had complied with the terms of his  
2 probation. However, Respondent was warned that future substantiated reports of similar  
3 behavior, or other violations of the law or violations of regulations governing the practice of a  
4 vocational nurse, could result in disciplinary action against Respondent's license.

5 **PRAYER**

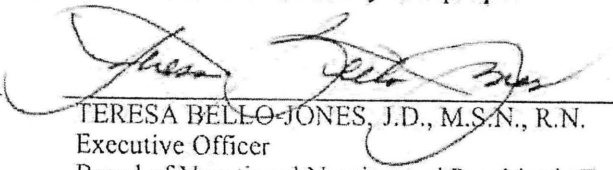
6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged.  
7 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians  
8 issue a decision:

9 1. Revoking or suspending Vocational Nurse License Number VN 241124, issued to  
10 Zeru Nkosi;

11 2. Ordering Zeru Nkosi to pay the Board of Vocational Nursing and Psychiatric  
12 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to  
13 Business and Professions Code section 125.3;

14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: March 8, 2011

16   
17 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
18 Executive Officer  
19 Board of Vocational Nursing and Psychiatric Technicians  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

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